

1 B J FADEM, ESQ. (SBN 118819)*
2 *Certified Family Law Specialist – State Board of Specialization
3 RON NERIO, ESQ. (SBN 251228)
4 **LAW OFFICES OF B J FADEM & ASSOC., APC.**
5 111 N Market Street, Suite 910
6 San Jose, CA 95113
7 Tel. 408-280-1220
8 Fax 408-971-9940

9 Attorney for DANIEL CARLOS CHIRAMBERRO LARRATEGUI

10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

12 In re)	Case No.: 14-26614-D-13G
)	D.C. No.: BJF-1
13 VALERIA EGUIGUREN LABORDE,)	
)	Chapter 13
14 Debtor.)	
)	OBJECTION TO CONFIRMATION OF
)	DEBTOR’S CHAPTER 13 PLAN
)	341 Meeting: 9/17/14
)	Confirmation Hearing: 10/21/14
)	Confirmation Time: 10:00AM
)	Confirmation Court:
)	Robert T. Matusi United States Courthouse
)	501 I Street
)	Sacramento, CA
)	
)	Judge: Hon. Robert S. Bardwill

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24 Daniel Carlos Chiramberro Larrategui¹ (hereinafter “Creditor”), priority creditor of the
25 above-entitled Debtor, Valeria Eguiguren Laborde (hereinafter “Debtor”), hereby objects to the

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27 ¹ This Objection to Confirmation of Chapter 13 Plan shall not constitute a waiver of the within party’s right to receive service pursuant to Fed.
28 R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding B J Fadem & Assoc. APC’s participation in this proceeding. Moreover, the within party does not authorize B J Fadem & Assoc. APC, either expressly or impliedly through B J Fadem & Assoc. APC’s participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

Chapter 13 Plan filed by Debtor in the above-referenced matter. The basis of this opposition is stated below:

I.

STATEMENT OF FACTS

1. Debtor and Creditor were previously married and have one child together. Litigation regarding the parties dissolution of marriage was conducted in Argentina.
2. Pursuant to the Argentinian Court Order, Debtor was required to pay Creditor child support.²
3. Debtor has failed to pay the ordered child support.
4. Debtor illegally, fraudulently and in contravention of the Argentinian Court Order regarding child custody, removed the parties' minor child from Argentina to the United States and withheld the minor child from returning to Creditor's custody.
5. The District Attorney's Office, in conjunction with the Creditor, instituted a kidnapping case against the Debtor in Superior Court in the County of Sacramento.
6. Thereafter the Debtor removed the case to the United States District Court Eastern District of California, as case No. 2:13-cv-01175 JAM-EFB.
7. A bench trial regarding the abduction and kidnapping of the parties' minor child was held on December 5, 2013; the Court granted Creditor's petition to return the parties' minor child to Argentina pursuant to the Hague Convention on the Civil Aspects of

² Creditor is in the process of obtaining the child support paperwork from the Argentinian Court along with a certified translation. This Objection will be amended to include the appropriate documentation when it is received.

1 International Child Abduction of 1980 (“the Hague Convention”), implemented by the
2 International Child Abduction Remedies Act of 1988 (“ICARA”).

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4 8. On or around May 22, 2014, the same Court awarded Creditor attorney’s fees and costs in
5 the amount of \$38,950.98 pursuant to Article 26 of the Hague Convention and 42 U.S.C.
6 § 11607 of ICARA.

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8 9. On or about June 25, 2014, Debtor filed the instant Chapter 13 bankruptcy petition in the
9 East District of California – Sacramento, and was assigned case number 14-26614.

10 10. On or about June 25, 2014, Debtor filed her Chapter 13 Plan (“Plan”) which provides for
11 payment to the Trustee in the sum of \$175.00 per month for sixty (60) months. However,
12 Debtor’s Plan does not provide for the cure of Creditor’s pre-petition child support
13 arrears nor for the ongoing child support payments, and also fails to account for priority
14 payments on the attorney fee award which was incurred during the litigation of Debtor’s
15 abduction and kidnapping of the parties’ minor child.
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17 11. Debtor instead listed the attorney’s fees awarded to Creditor, in association with the
18 litigation of the Hague kidnapping case, as an unsecured debt on the Debtor’s Schedule F
19 and entirely fails to list the pre-petition child support arrears on any of the Schedules.
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21 12. Debtor will have to increase payment through the Chapter 13 Plan to Creditor to
22 approximately \$1,989.10 monthly, at minimum, in order to cure Creditor’s pre-petition
23 arrears and attorney fee award over a period not to exceed sixty (60) months.

24 Creditor now objects to the Chapter 13 Plan filed by Debtor.

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2 **II.**3 **ARGUMENT**4 **A. DOMESTIC SUPPORT OBLIGATIONS MUST BE PAID AS AN UNSECURED**
5 **PRIORITY CLAIM**

6 Section 507(a) of the Bankruptcy Code sets forth ten categories of expenses and claims that
7 are entitled to priority payment in a bankruptcy case. See 11 U.S.C. § 507(a). Among the
8 classifications under § 507, the Bankruptcy Code grants first priority to “domestic support
9 obligations,” which are not dischargeable in bankruptcy pursuant to § 523(a)(5). See 11
10 U.S.C. §§ 507(a)(1) and 523(a)(5). The term “domestic support obligation” is defined in 11
11 U.S.C. § 101(14A), which provides in pertinent part, as follows:

12 (14A) The term ‘domestic support obligation’ means a debt that
13 accrues before, on, or after the date of the order for relief in a case
14 under this title, including interest that accrues on that debt as
15 provided under applicable nonbankruptcy law ... that is –

16 (A) owed to or recoverable by –

17 (i) a spouse, former spouse, or child of the debtor or
18 such child’s parent, legal guardian, or responsible
19 relative; or

20 (ii) a governmental unit;

21 (B) in the nature of alimony, maintenance, or support ... of
22 such spouse, former spouse, or child of the debtor or such
23 child’s parent, without regard to whether such debt is
24 expressly so designated;

25 (C) established or subject to establishment before, on or
26 after the date of the order for relief in a case under this title,
27 by reason of applicable provision or –

28 (i) a separation agreement, divorce decree, or
property settlement agreement;

(iii) an order of a court of record; or

(iv) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

The Debtor and Creditor, former spouses, who are parents to a minor child, divorced in Argentina. The Argentina court eventually awarded custody of the minor child to Creditor, when Debtor decided to move to the United States. As a result, the Argentinean Court awarded to Creditor, child support, to be paid by Debtor to Creditor.

Debtor has not paid said amount and is currently in arrears. Debtor has failed to list this debt on her schedules and has failed to account for this amount in her Chapter 13 Plan. Creditor respectfully objects to the confirmation of the Debtor's Chapter 13 Plan and requests that the case be dismissed or in the alternative that the Chapter 13 Plan be increased to account for the pre-petitioner child support arrears owed to Creditor.

B. ATTORNEY'S FEES AND COSTS AWARDED UNDER HAGUE CONVENTION ARE PRIORITY DOMESTIC SUPPORT OBLIGATIONS

To reiterate, 11 U.S.C. § 523(a)(5) excepts from the bankruptcy discharge domestic support obligations.

The Debtor's debt arising from the Hague Trial regarding her abduction of the parties' minor child resulted in an award of attorney's fees and costs to the Creditor to be paid by the Debtor.

1 Creditor had originally requested attorney's fees and costs in the amount of \$55,372.14, however
2 the United States District Court for the Eastern District of California took into account the
3 Debtor's financial circumstances and awarded the reduced amount of \$38,950.98, as allowed
4 under the applicable case law.
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6 Attorney's fees made in connection with domestic support obligations are non-dischargeable.
7 An obligation to pay attorney's fees has been construed as being both support and non-support
8 depending on the factual circumstances of the case. See Gionis v. Wayne (In re Gionis), 170 B.R.
9 675, 683–84 (B .A.P. 9th Cir.1994) (concluding that attorney's fees obligation was in nature of
10 support and therefore nondischargeable), aff'd, 92 F.3d 1192 (9th Cir.1996) (unpublished table
11 decision).
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13 Although Creditor's counsel has been unable to locate a controlling case regarding the
14 dischargeability of attorney's fees awarded under the Hague convention, a sister court has
15 rendered a decision. The United States Bankruptcy Court, District of Minnesota, held that an
16 award of attorney fees and cost award under the ICARA in a Hague case is excepted from
17 discharge by operation of 11 U.S.C. § 523(a)(5). Weed v. Lakeman, 479 B.R. 533
18 (Bankr.D.Minn. 2012). There the court reasoned that "[e]very dollar spent on attorney's fees is a
19 dollar not available for the support of [the custodial parent] and [the child]." Id. at 542, quoting
20 In re Shea, 221 B.R. 491, 498 (Bankr.D.Minn. 1998).
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23 Moreover, adding to the analysis is the determination of the attorney fee award. As the Ninth
24 Circuit permits an award to be reduced based on the parties' financial circumstances, and the
25 Debtor's debt was adjusted by the District Court Judge due to her limited income and assets. See
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1 Id. at 544. Therefore, it is clear that the attorney fee award owed to Creditor is in the nature of
2 support, which is excepted from the Debtor's anticipated discharge.

3 Creditor respectfully objects to the confirmation of the Debtor's Chapter 13 Plan and requests
4 that the case be dismissed or in the alternative that the Chapter 13 Plan be increased to account
5 for the attorney fee award provided under ICARA which are owed to Creditor.
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8 **III.**

9 **CONCLUSION**

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11 In conclusion, the Creditor respectfully requests that the Debtor's Chapter 13 be
12 dismissed. In the alternative, the child support arrears owed to Creditor, via the Argentinian
13 family law court order should be scheduled as unsecured priority debt, and the attorney fee award
14 under ICARA in the parties' Hague case, must also be scheduled as unsecured priority debts.
15 The Debtor's Chapter 13 Plan payment should therefore be amended to \$1,089.10 at minimum.
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19 LAW OFFICES OF BJ FADEM & ASSOC., APC.
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22 Dated: 9/24/14

23 /s/ Ron Nerio
24 Ron Nerio, Esq.
25 Attorney for Creditor
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